IN THE HIGH COURT OF DELHI AT NEW DELHI

CRP NO. 162/2007

Judgment delivered on: September 12,2007

Bennett Coleman &Co Ltd. ..... Petitioner

Through: Mr. Sanjay Kumar Singh, Advocate

versus

1. Rajan Verma & Ors. ..... Respondent

Through: Mr.J.S. Bakshi, Advocate

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR,

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

KAILASH GAMBHIR, J. Oral:

This revision petition has been preferred by the petitioner feeling aggrieved with the order passed by the

learned Additional District Judge dismissing the application of the petitioner under Order 7 Rule 11 read with Section 151, CPC. Mr. Sanjay Kumar Singh, counsel for the petitioner has contended that the order passed by the learned trial court is illegal and perverse as the learned trial court has adopted a hyper technical approach in dismissing the said application of the petitioner. Counsel for the petitioner also contended that the petitioner is well within its rights to carry out the publication of advertisement as required by the principal of M/s. Nokia Pvt. Ltd. and other various dealers etc., for the promotion of their mobile phone. Counsel for the petitioner contended that no fetters can be put on the rights of the petitioner who is a publisher of a leading newspaper to carry out advertisement of the said company and any curtailment in the exercise of their rights shall be violative of their fundamental rights under Articles 14 & 16 of the Constitution of India. Counsel for the petitioner also contends that no injunction orders

can be passed in the suit filed by the respondent no.1 on account of detection of some defect in the mobile phone set which was purchased by him from the Nokia company. The contention of the counsel is that such a suit filed by the respondent no.1 is not only misconceived but is also devoid of any merit. Counsel for the petitioner has placed reliance on the judgments of the Supreme Court in **T. Arivandandam Vs. T.V. Satyapal & Anr., (1978) 1 SCR 743, I.T.C. Limited Vs. Debts Recovery Appellate Tribunal, AIR 1998 SC 634, Subodh Kumar Gupta Vs. Shrikant Gupta & Ors., 1993 (3) ALT 59 (SC),** and **Saleem Bhai & Ors. Vs. State of Maharashtra & Ors., AIR 2003 SC 759;** decision of Division Bench of this Court in **Khushwant Singh & Anr. Vs. Maneka Gandhi, AIR 2002 DELHI 58** and decision of the Allahabad High Court in **Umesh Chandra Saxena & Ors. etc. Vs. Administrator General & Ors., AIR 1999 ALL 109.**

Mr. J.S. Bakshi counsel for the respondent no.1 on

the other hand vehemently opposes the said submissions of the counsel for the petitioner. Counsel for the respondent no.1 contended that the application moved by the petitioner under Order 7 Rule 11, CPC was not maintainable and therefore, the same has been rightly dismissed by the trial court. Inviting attention of this Court to the prayer in the said application, counsel for the respondent contended that even as per the prayer the relief claimed was for the deletion of the petitioner/defendant no.4 from the array of parties and not for rejection of the plaint. Mr. Bakshi counsel for the respondent also contended that it is not the case of the petitioner that the plaint does not disclose any cause of action which can merit rejection under Order 7 Rule 11 of the CPC but the petitioner has only vaguely stated that there is no cause of action to file the above suit by the respondent no.1 against the petitioner. In support of his arguments Mr. Bakshi counsel for the respondent has placed

reliance on the judgment of this Court in **Maharaji Educational Trust & Anr. Vs. Punjab & Sind Bank & Anr.**, **127 (2006) DLT 161**.

I find force in the arguments of counsel for the respondent that for passing any order under the provision of Order 7 Rule 11, CPC the Court has to look into the averments made in the plaint. A matter pertaining to rejection of plaint is a serious matter as it non suits the plaintiff and kills the cause of action. Order 7 Rule 11 of the Code was brought on the statute book in order to curb the malpractice of pursuing frivolous and vexatious litigation. Under the said provision the court has jurisdiction to reject the plaint where it does not disclose a cause of action; where the relief claimed is undervalued and the valuation is not corrected within the time as fixed by the court; where insufficient court fee is paid and the additional court fee is not supplied within the period given by the court and where the suit appears from the statement in the plaint to be

barred by any law. While dealing with an application filed by the petitioner/defendant under Order 7 Rule 11 of the Code the Court has to find out whether the real cause of action has been set out in the plaint or something illusory has been projected in the plaint with a view to get out of the purview of the said provision and for the said purpose the entire plaint and the averments made therein have to be read as a whole, taking those averments to be correct. In pursuance of this obligation, upon a meaningful and not formal or cursory reading of the plaint, if the plaint is found to be manifestly vexatious, nettlesome and meritless, in the sense of not disclosing a clear right to sue, then only the court should exercise its power under Order 7 Rule 11 of the Code taking care to see that the ground mentioned under the said provision is fulfilled. The allegations made by the defendant in his written statement or in an application for rejection of the plaint cannot be the basis for the exercise of the power under the said provision and also, the mere fact

that in the opinion of the Judge the plaintiff may not succeed cannot be a ground for rejection of the plaint. There is a difference between a suit which has no cause of action, and a case where the plaint does not disclose a complete or even a partial cause of action in the plaint. It is a settled position of law that while considering an application under Order 7 Rule 11, CPC the Court has to accept the facts as contained in the plaint to be primarily correct, more particularly when deciding the very maintainability of the plaint on an application moved by the contesting party under Order 7 Rule 11, CPC. Without commenting on the merits of the claim of the respondent as against the petitioner, a bare perusal of the averments contained in the plaint on the very face of it shows that it does disclose a cause of action for trying the suit against the petitioner. It would be appropriate to reproduce the following paragraphs of the plaint in this regard.

"17. That the Defendants No.3 and 4 are

indulging in causing false and misleading advertisements regarding the products of the Defendant No. 1 an the media. The said advertisements are meant to cheat other unwary people like the Plaintiff and are in instrument of aid in the Defendants' indulgence in Unfair Trade Practice.

.....That the Defendants No 3 and 4 have not responded to the Notice of the Plaintiff and to save unwary public from bearing further cheated by the Defendant No 1, it would be in the interest of justice that the Defendants No3 and 4 are restrained from publishing advertisements in their publications on behalf of Defendant No 1 regarding its products.

That the cause of action arose in favour of the plaintiff and against the Defendants on various dates when the misleading advertisements appeared in the publications of Defendants No 3 and 4. The cause of action further arose against the Defendants No 1 and 2 when they sold the inherently defective Nokia hand set. As the demands made in the legal notice dated 18.10.2006 have not been complied with the cause of action in favour of the plaintiff and against the Defendants is arising every day."

Taking the said averments of the plaint on its face value it cannot be said that the plaint does not disclose any cause of action against the petitioner/defendant no.4. The underlying idea of Order 7 Rule 11 (a) no doubt is that the

Court should not be flooded with unnecessary frivolous or vexatious litigation. But at the same time the courts have to be very careful in passing an order rejecting a plaint right at the threshold as such a course has the effect of finally determining the rights of the parties without there being any trial. Relevant para from **Maharaji Educational Trust's case (Supra)** is reproduced below:

> "13 . It is a settled principle of law that in order to take up the pleas under Order 7 Rules 10 and 11 of the Code, the party concerned has to essentially take the averments made in the plaint as correct. Such a plea being the plea of demurrer the defendants cannot take advantage of the averments made in the written statement or the factual narration to show that averments made in the plaint are incorrect. The Court would take into consideration the plaint as a whole and the documents placed by the plaintiffs on record, in order to examine such pleas. This principle of law is no more res integra and has been settled by various judgments of the Court. In this regard, reference can be made to the judgment of this Court in the case of New Holland Tractors (India) Pvt. Ltd. v. M/s. Raja Industrial Works and Ors., IA 6689/2005 in CS (OS) 501/2004, decided on 8th September, 2005:
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> "4. It is further a settled canon of civil jurisprudence that the Court while considering an

application under Order 7 Rule 11 of the CPC has to assume that the facts averred in the plaint are primarily correct particularly when such averments are supported by the documents in the case. Reference in this regard can be made to the judgment of ABN-Amre Bank v. The Punjab Urban Planning and Development Authority, 1993 (3) PLR 479, where the Court held as under:

'7. It is a settled rule of law that the plea of rejection of plaint is founded on the "PLEA of Demurrer". A person raising such plea in law has to take the facts as stated by the opponent as correct. Despite tentative admission of such correctness, the plaint does not disclose a complete or even partial cause of action or the relief claimed is barred by law and thus, the plaint is liable to be rejected within the provision of Order 7 Rule 11 of the Code of Civil Procedure. Plain language of this rule shows that for determination of an application under this provision, the Court has to look into the plaint. This concept has been extended by judicial pronouncement of various Courts so as to take within its ambit even the documents filed by the plaintiff along with plaint or subsequent thereto but prior to the hearing of such application.....'

5. Reference can also be made to the judgment of Supreme Court in Liverpool and London S.P. & I. Association Ltd. v. M.V. Sea Success I and Another, (2004) 9 SCC 512, wherein the Supreme Court held as under:

'139. Whether a plaint discloses a cause of action or not is essentially a question of act. But

> whether it does or does not must be found out from reading the plaint itself. For the said purpose the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed'."

In the light of the aforesaid discussion the judgments cited by the counsel for the petitioner are not found to be applicable in the facts and circumstances of the present case.

I do not find any infirmity in the impugned order. There is no merit.

Dismissed.

September 12, 2007 **KAILASH GAMBHIR J.**
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